

## REMARKS/ARGUMENTS

Claims 42, 43, 45 – 52, and 54 are presented for reconsideration and further examination in view of the foregoing amendments and following remarks. Claims 55 – 58 are newly presented for a first Examination on the merits.

In the outstanding Office Action, the Examiner:

- withdrew all previous grounds of rejection, which Applicants note with appreciation;
- rejected claim 44 under 35 U.S.C. 112, second paragraph, as being incomplete;
- rejected claims 42 – 52 and 54 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,517,021 to Kaufman et al. (hereinafter referred to as “Kaufman”);
- objected to claims 42, 44, 46, 47 – 52 and 54 for informalities; and,
- required the applicants to supply a copy of material incorporated by reference and considered pertinent to the Applicant’s disclosure.

In an interview between the Examiner and Applicants’ representatives, the Examiner indicated that:

- the present rejections under 35 U.S.C. 102(b) would be obviated by claim amendments specifically reciting means for “stopping the collection of data after a predetermined number of faults or an indication that the data is reliable;”
- potential rejections under 35 U.S.C. 101 could be avoided by reciting that the previously-claimed means for analyzing data and for comparing data, along with any presently-claimed means for stopping the collection of data, include a computer executing instructions for these means; and
- new claims could be added reciting other features set forth in the specification, such as the hood, stimulus pattern, and scattering check, without introducing new matter.

This efficient and productive interview is noted with appreciation. Accordingly:

- independent claim 42, from which all other pending claims directly or indirectly depend, has been amended to positively recite a *computer processor executing instructions* for both “analyzing ... data and for comparing said data to predetermined values to determine if said data is outside of predetermined ranges and thus indicates unreliable data results” and “*stopping the collection of data after the occurrence of a predetermined number of faults or after receiving an indication that the data collected is reliable,*” (emphases added) thereby obviating the present rejections under 35 U.S.C. 102(b) and potential further rejections identified by the Examiner;
- independent claim 42 has been further amended to specify that the “means for detecting electrical signals” specifically detects signals “representative of the patient's evoked *brain* potentials” and comprise “a plurality of electrodes configured to be connected to a scalp of a patient, wherein at least one electrode is configured to be placed over the visual cortex of the patient” (emphasis added), thereby further distinguishing the present application from the eye-tracking technology of Kaufman;
- independent claim 42 has still further been amended to remove the specific fault test inserted in the previous response, which is now recited in dependent claim 55, and the Examiner is requested to consider *de novo* the patentability of the present claims over the previously cited references of U.S. Patent No. 5,474,081 to Livingstone et al. and U.S. Patent Application Publication No. 2001/0049480 to John et al., to the extent that previous rejections may have been withdrawn in

view of the feature now removed from claim 42;

- the subject matter of claim 44 has been incorporated into amended claim 42 in a manner which obviates the Examiner's objection and rejection of claim 44, and claim 44 has thus been cancelled without prejudice or disclaimer;
- claims 42, 46 –52, and 54 have been amended in either a manner suggested by the Examiner or a manner consistent therewith in view of other present amendments, to obviate the objections thereto; and
- new claims 56, 57, and 58 are presented to recite features discussed in the interview and believed to be independently patentable in view of the cited art;

It is respectfully submitted that the above amendments do not introduce any new matter to this application within the meaning of 35 U.S.C. 132. Support for the amendments to claim 42 may be found *inter alia* in the specification on page 8 (“a central processing unit of a computer... control[s] the operation and functions of the VEP recording and measuring device;” “[d]isposable electrodes...are positioned on the scalp of the patient 17 over the visual cortex...”), and on pages 12 and 13 (“[i]f there has been a data error recorded, the process will proceed...to determine if a predetermined maximum number of data points have been generated during the test. If not, the system will ... run through the sequence of collecting additional data unless...the system detects that a predetermined maximum number of data points have been reached. If the maximum has been reached, it is an indication that the conditions for acquiring satisfactory error free VEP signal data is just not achievable at this time...If the required number of good (error free data) samples has been achieved, the process proceeds...”)

### **CLAIM OBJECTIONS**

In the outstanding Office Action, the Examiner objected to claims 42, 44, 46, 47 – 52 and 54 for informalities.

### **RESPONSE**

As noted above, it is believed the that present amendments obviate all of the Examiner's objections to the present claims.

### **REJECTION UNDER 35 U.S.C. 112, SECOND PARAGRAPH**

In the outstanding Office Action, the Examiner claim 44 under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements.

### **RESPONSE**

It is believed the that present amendments to claim 42, into which the subject matter of claim 44 has been incorporated, obviate the Examiner's grounds for rejection of claim 44, which has been cancelled without prejudice or disclaimer.

### **REJECTION UNDER 35 U.S.C. 102(b)**

In the outstanding Office Action, the Examiner rejected claims 42 – 52 and 54 under 35 U.S.C. 102(b) as being anticipated by Kaufman. In the interview, the Examiner indicated that the present rejections under 35 U.S.C. 102(b) would be obviated by claim amendments specifically

reciting means for “stopping the collection of data after a predetermined number of faults or an indication that the data is reliable.”

## **RESPONSE**

By this Response and Amendment, Applicants traverse the Examiner’s anticipation rejections since all of the features of the presently claimed subject matter are not disclosed, taught or suggested by the cited prior art. For a reference to anticipate an invention, all of the elements of that invention must be present in the reference. The test for anticipation under section 102 is whether each and every element as set forth in the claim is found, either expressly or inherently, in a single prior art reference. *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987); MPEP §2131.

It is believed the that present amendments to claim 42 provide features identified in the interview as being absent in the cited art of Kaufman, as claim 42 now recites a computer processor executing “instructions for stopping the collection of data after the occurrence of a predetermined number of faults or after receiving an indication that the data collected is reliable.”

Further, claim 42 now recites that the “means for detecting electrical signals representative of the patient's evoked brain potentials” comprises “a plurality of electrodes configured to be connected to a scalp of a patient, wherein at least one electrode is configured to be placed over the visual cortex of the patient.” This feature too is believed to be absent in the prior art of Kaufman.

Kaufman is drawn to an eye tracking apparatus and method, in which “a detecting device...detect[s] bio-electromagnetic signals generated by eye movements.”

As discussed in the interview, the present claim amendments provide features which

define the present invention over the cited art of Kaufman.

In the present claims, an electrode is placed “over the visual cortex” of the patient. In distinction, the electrodes of Kaufman are placed only on the forehead of a patient.

Further, in the present claims “brain potentials” are measured. In distinction, in Kaufman eye movements are measured, but *brain* potentials are not.

Further still, in the present claims a computer processor executes “instructions for stopping the collection of data after the occurrence of a predetermined number of faults or after receiving an indication that the data collected is reliable.” In distinction, Kaufman is drawn to means for minimizing faults (such as the notch filter of col. 4, or the contextual filtering of col. 9), but not for stopping the collection of data “after the occurrence of a predetermined number of faults or after receiving an indication that the data collected is reliable.”

For all of the above reasons, it is submitted that claim 42 is patentable over the cited art of record. As claims 43 – 52 and 54 depend from claim 42, they too are believed to be patentable over the cited art of record. Reconsideration and withdrawal of all rejections under 35 U.S.C. 102(b) are respectfully requested.

#### **REQUIREMENT FOR INFORMATION DISCLOSURE STATEMENT**

In the outstanding Office Action, the Examiner required the applicants to supply a copy of material incorporated by reference and considered pertinent to the Applicant’s disclosure.

A sufficient Information Disclosure Statement accompanies this response.

## NEW CLAIMS

In the above amendments, Applicants submit new claims 55 – 58. Claim 55 recites features presently removed from claim 42. These features were originally presented in dependent claim 53, now cancelled. The Examiner is requested to consider *de novo* the patentability of the present claims over the previously cited references of U.S. Patent No. 5,474,081 to Livingstone et al. and U.S. Patent Application Publication No. 2001/0049480 to John et al., to the extent that rejections over these references may have been withdrawn in view of these particular features.

Claim 56 positively recites “a hood placed between the patient and said means for presenting”, a feature not found in the cited art of record. It is believed that claim 56 is allowable not only for its dependence from allowable claim 42, but also for the presence of this additionally patentable feature.

Claim 57 positively recites that “said series of sensory stimuli comprises a series of six patterns of alternating and contrasting horizontally-oriented light and dark bands, wherein each pattern differs from other patterns by the thickness of each band”, a feature not found in the cited art of record. It is believed that claim 57 is allowable not only for its dependence from allowable claim 42, but also for the presence of this additionally patentable feature.

Claim 58 positively recites that the computer processor further executes a program for determining if said data passes a scattering check”, a feature not found in the cited art of record. It is believed that claim 58 is allowable not only for its dependence from allowable claim 42, but also for the presence of this additionally patentable feature.

Entry and allowance of these claims is respectfully requested.

### CONCLUSION

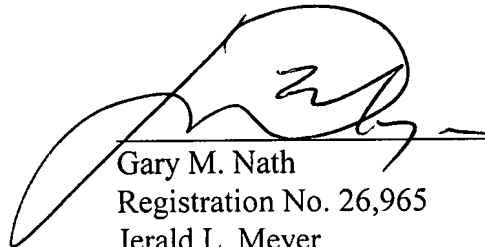
In light of the foregoing, Applicants submit that the application is now in condition for allowance. If the Examiner believes the application is not in condition for allowance, Applicants respectfully request that the Examiner contact the undersigned attorney if it is believed that such contact will expedite the prosecution of the application.

In the event this paper is not timely filed, Applicants petition for an appropriate extension of time. Please charge any fee deficiency or credit any overpayment to Deposit Account No. 14-0112.

Respectfully submitted,  
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